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COMPLIANCE GUIDELINE

GUIDELINE F-2



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COMPLIANCE GUIDELINE

Ministry of Environment and Energy

Guideline F - 2

Legislative authority:

Environmental Protection Act
Ontario Water Resources Act
Pesticides Act
Environmental Assessment Act
Provincial Offences Act
Niagara Escarpment Planning & Developmental Act

Responsible Assistant Deputy Minister:

Assistant Deputy Minister, Operations Division

Last revision date:

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Environment Ontario
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125 Resources Rd.
Etobicoke, Ontario M9P 3V6
Canada

COMPLIANCE

Guideline F - 2

This guideline documents the ministry's approach and provides guidance to ministry staff for achieving and maintaining province-wide compliance with its legislation and regulations for the protection and improvement of the environment. This guideline has been developed, mindful of the ministry's Statement of Environmental Values under the *Environmental Bill of Rights, 1993*. The guideline accommodates consideration of the purposes of the *Environmental Bill of Rights, 1993*, appropriately integrated with social, economic, scientific and other considerations, in the making of decisions related to compliance, abatement and enforcement.

The guideline describes how the ministry uses both abatement and enforcement to achieve compliance and confirms that at any stage of the abatement process the ministry may pursue enforcement action as a means of addressing violations. The abatement process may address violations directly and in certain circumstances preventative or proactive measures may also be appropriate to maintain compliance.

It sets out:

- the abatement tools available under the ministry's legislation;
- the principles governing the ministry's enforcement of laws;
- the means by which the ministry provides public notification and consultation respecting its abatement and enforcement activities.

Table of Contents

1.	DEFINITIONS	1
2.	IDENTIFICATION OF NON-COMPLIANCE	5
3.	DOCUMENTATION	5
4.	EVALUATION AND INITIAL RESPONSE	5
4.1	An emergency or spill	6
4.2	An immediate danger	6
4.3	A potential, unknown environmental hazard	6
4.4	All other non-compliance situations	7
5.	VOLUNTARY ABATEMENT	8
5.1	Form of written request	8
5.2	Content of response	9
5.3	Extensions, inadequate or negative responses	9
5.4	Program approval	10
5.5	Deviation from schedule	11
5.6	Time limit when progress unsatisfactory	11
6.	MANDATORY ABATEMENT	11
6.1	Consideration in preparing control document	12
6.2	Compliance schedule	12
6.3	Change in status	12
6.4	Financial assurance	13
6.5	Responsibility for emissions and discharges	13
6.6	Financial constraints	13
6.7	Field orders	14
6.8	Internal consultation and notification	14
6.9	Authorizing documents	15
6.10	Compliance with control documents	15
6.11	Enforcement of control and authorizing documents	15
6.12	Notice of intent to issue a control document to the person responsible	15
7.	PUBLIC NOTIFICATION AND CONSULTATION	15
7.1	Abatement of immediate danger	16
7.2	Determination of extent	17
7.3	Selection of appropriate means	17
7.4	Public consultation on control documents	17
7.5	Amendments	18
8.	DOCUMENTS AVAILABLE FOR INSPECTION	18

9.	ENFORCEMENT	19
9.1	Matter referred to IEB	19
9.2	IEB investigation	19
9.3	Prosecution brief	20
9.4	Internal notification of prosecution brief	20
9.5	Legal Services Branch	20
9.6	Attorney General	20
9.7	Principles of enforcement	20
10.	INFORMED JUDGMENT	21
11.	PROSECUTION	22
11.1	Prosecutorial discretion	22
11.2	Penalty	22
12.	ISSUANCE OF POA PART I - OFFENCE NOTICE / SUMMONS	22
12.1	Offence notice (ticket)	23
12.2	Part I summons	23
13.	ISSUANCE OF A POA PART III - FOUND COMMITTING SUMMONS	23
14.	INFORMATION FOR THE PUBLIC RESPECTING ENFORCEMENT ACTIVITIES	24
Schedule 1		1
	Control documents	1
	Authorizing documents	4
Schedule 2		1
	Field orders - limitations	1

1. DEFINITIONS

Abatement:

Measures to bring about and to maintain compliance, usually focused directly on the control, prevention, reduction and elimination of pollution.

Authorizing documents:

Documents which are authorized by statute such as certificates of approval, licences and permits which may have conditions. These documents permit and control the manner in which activities are carried out. They are binding on the recipient and are directly enforceable by prosecution. Most of the current authorizing documents are listed in schedule 1.

Compliance:

A state achieved by adhering to the legislative and regulatory requirements of the ministry. These requirements cover a wide range of activities.

Control documents:

Documents which are authorized by statute such as control orders, stop orders etc., which have specific requirements. They are binding upon the recipient and can be directly enforced by prosecution. These are listed in schedule 1.

Director:

Any person appointed by the Minister as a Director for the purposes of the legislation and regulations or any part thereof. Director also includes a person specified or deemed by statute to be a Director and any person authorized to issue a control document, such as the Minister for a section 97 order under the *Environmental Protection Act*, a provincial officer for a stop order under section 27 of the *Pesticides Act*, or provincial officers appointed as Directors for issuing field orders.

Enforcement:

In general, this entails an investigation by staff of the Investigations and Enforcement Branch (IEB), to determine whether reasonable and probable grounds exist for laying charges in order to penalize non-compliance or to compel compliance with the legislative and regulatory requirements of the ministry. Enforcement may also include issuing a *Provincial Offences Act* (POA) ticket or summons by any provincial offences officer. Enforcement which is prompt and certain serves as a general deterrent to others who might be tempted to contravene the environmental laws and regulations.

Field observation report:

A report which documents observations and violations observed by a provincial officer.

Field order:

A control document issued by a Director who has been appointed for the purposes of field orders.

A field order must include notice to the person responsible that application may be made to the Regional Director to amend, vary or revoke the order.

Ministry:

The Ministry of Environment and Energy

Occurrence report:

A document, prepared by ministry staff, for situations which may require abatement or enforcement action. These reports document an incident, complaint, notification, suspected violations, proactive efforts and Environmental Bill of Rights investigations. Such a report provides a synopsis of the situation and a summary of recommendations for future action.

Person:

Includes, but is not limited to, an individual, and may include a corporation, a municipality or the Crown.

Person responsible:

For the purpose of this guideline, means the person to whom a control document or authorizing document may be issued. Reference should be made to legislation for precise definitions, but, in general, means the following:

In the *Environmental Protection Act*, means:

- (a) owner,
- (b) person in occupation,
- (c) person having the charge, management or control of a source of contaminant, and
- (d) may include additional persons, such as the previous owner, depending on the control document.

In the *Pesticides Act*, means, when used with reference to a pesticide, substance or thing:

- (a) the owner,
- (b) the person having the charge, management or control of the handling, storage, use, disposal, transportation or display, or
- (c) the person having the charge, management or control,

of the pesticide, substance or thing.

In the *Ontario Water Resources Act* and the *Environmental Assessment Act*, has a meaning corresponding to those contained in the other acts.

Program approval:

A document describing a schedule of voluntary abatement activity which has been developed by the person responsible and approved by the Director under the authority of sections 10 and 11 of the *Environmental Protection Act*. This is a form of voluntary abatement specifically authorized by statute.

Provincial officer:

A person designated by the Minister, in writing, as a provincial officer for the purposes of the administration of any acts administered by the ministry.

The designation is usually for the purposes of:

- the *Environmental Protection Act*;
- the *Environmental Assessment Act*;
- the *Ontario Water Resources Act*;
- the *Pesticides Act*;

and the regulations made under them.

The Minister, in a designation, may limit the authority of the provincial officer to specific acts, regulations or sections and in any other manner as the Minister considers necessary.

A provincial officer designation generally includes designation as a provincial offences officer under the *Provincial Offences Act*.

Provincial officer's report:

A report prepared by a provincial officer required for control orders under section 7 of the *Environmental Protection Act*. If a control order is to be issued the report must contain a finding that a contaminant discharged:

- (a) is a contaminant the use of which is prohibited by regulation,
- (b) is a contravention of section 14 of the Act, or
- (c) contravenes the regulations.

The provincial officer's report may also be used in connection with other control documents, authorizing documents and program approvals.

Public:

Any individual, person or group including, but not limited to, the local MPP, the municipality, First Nation, industry, neighbor, community, professional and corporate interest groups.

Public consultation:

A process involving interactive communication between the ministry and the public, and often the person responsible. The process allows the parties to become informed about different perspectives on issues or proposals and provides the public with the opportunity to influence decisions to be made by the ministry.

Public notification:

A process through which the ministry provides relevant and timely information to the public or ensures that the person responsible does so.

Violation:

A contravention of any act or regulation administered by the ministry

Violation notice:

A written notice by a provincial officer to a person responsible, which states that a violation has been observed.

Voluntary abatement request:

A written request issued by a provincial officer to a person responsible, that identifies violations and requests that voluntary abatement action be taken or that the person responsible submits a voluntary abatement program

2. IDENTIFICATION OF NON-COMPLIANCE

The ministry will identify non-compliance situations through such means as conducting routine inspections, responding to spills, addressing complaints, handling *Environmental Bill of Rights* requests for investigation, reviewing information received, requesting returns and pursuing proactive or other abatement programs.

3. DOCUMENTATION

Spills, complaints, notifiable discharges other than spills, violations and EBR investigations must be documented on an occurrence report with a synopsis of the situation and recommended future action.

The initial occurrence report shall contain, as a minimum, the date, location, source and description of the occurrence. The abatement action taken shall also be documented on an occurrence report.

When the provincial officer is of the opinion that a violation has occurred, the suspected violation and a recommendation regarding enforcement action shall be recorded on the occurrence report. The signed original report shall be forwarded to the Investigations and Enforcement Branch.

Documentation may be completed by a provincial officer while at the location and provided directly to the person responsible. The documentation may be used to issue a warning when a violation has occurred, to document a site visit, to request voluntary abatement, to initiate enforcement, and/or to require mandatory abatement action. This documentation may include:

- (a) a request for voluntary abatement,
- (b) a field order,
- (c) a violation notice,
- (d) a *Provincial Offences Act* (POA) offence notice (ticket),
- (e) some of the ministry's various inspection reports.

4. EVALUATION AND INITIAL RESPONSE

Enforcement action, as discussed in sections 9 - *Enforcement* to 12 - *Issuance of an offence notice* shall be considered regardless of which form of abatement program is pursued. At any stage in the process the situation may be re-evaluated.

Every non-compliance situation identified will be promptly evaluated to determine whether it constitutes:

- an emergency or spill
- an immediate danger
- a potential, unknown environmental hazard
- all other non-compliance situations

4.1 An emergency or spill

If a situation is an emergency or a spill as defined in Guideline G-1 entitled *Role of the ministry in emergencies and spills*,

- (a) the ministry will respond in accordance with Guideline G-1; and
- (b) if abatement is required to address non-compliance or to prevent a recurrence or continuance of the emergency or spill, the ministry will apply this guideline, in addition to Guideline G-1.

4.2 An immediate danger

If a situation, including one covered under section 4.1 - *An emergency or spill*, poses an immediate danger to human life or health or to property such that immediate action is warranted,

- (a) the ministry will directly use the appropriate control document or authorizing document, such as a stop order, if immediate voluntary curtailment does not occur; and/or
- (b) using an appropriate control document or authorizing document, the ministry may implement an appropriate abatement program to the extent necessary to stabilize the situation and curtail any immediate danger, and
- (c) the ministry may proceed to use the appropriate control document or authorizing document to require the person responsible to implement or continue the necessary abatement program;
- (d) if abatement is required to address non-compliance or to prevent a recurrence or continuance of the immediate danger, the ministry will apply this guideline;
- (e) the ministry will provide the necessary notification to those affected by the immediate danger in accordance with section 7 - *Public notification and consultation*.

4.3 A potential, unknown environmental hazard

If a situation is believed to have had an adverse environmental impact and/or may pose an immediate danger to human life or health or to property, but the nature and extent of which are unknown or uncertain (e.g., buried hazardous wastes):

- (a) the ministry will promptly initiate appropriate action(s) to ensure that the nature and extent of the situation is characterized in sufficient detail to permit the determination of an appropriate course of action; and

- (b) if the situation identified is an emergency or spill, action shall proceed in accordance with section 4.1 - *An emergency or spill*; or
- (c) if the situation identified poses an immediate danger, action shall proceed according to section 4.2 - *An immediate danger*; or
- (d) for all other situations of non-compliance, the ministry shall proceed in accordance with section 4.4 - *All other non-compliance situations*.

4.4 All other non-compliance situations

For all other non-compliance situations, ministry staff should consider the following, where practicable, in order to determine whether voluntary or mandatory abatement is appropriate.

There may be certain situations where voluntary abatement may be considered appropriate but mandatory criteria exist. In these situations voluntary abatement may be pursued if the reasons for the decision are documented on an occurrence report.

Mandatory criteria are:

- (a) the non-compliance situation poses a significant risk to, or will have a serious adverse effect on, humans, plant or animal life, property or the environment;
- (b) the contaminant emitted as a result of the act of non-compliance is a serious obstacle to the achievement of the ministry's air quality and water quality objectives;
- (c) an undertaking is in non-compliance with the terms or conditions of a certificate of approval, permit, or licence issued by the ministry;
- (d) there is an unsatisfactory compliance record;
- (e) the act of non-compliance appears to have been deliberate;
- (f) the act of non-compliance appears to have been the result of negligence;
- (g) the violation has been repeated;
- (h) voluntary abatement has not met with a positive response by the person responsible;
- (i) voluntary abatement measures have not resulted in satisfactory progress toward compliance.

5. VOLUNTARY ABATEMENT

Where voluntary abatement is considered appropriate, the ministry may make an oral or written request to the person responsible that a voluntary abatement program be undertaken within a specified time period.

If a request is made orally, the ministry must confirm the request in writing as soon as practicable, unless the action requested was completed forthwith and was documented on the occurrence report in accordance with section 3 - *Documentation*.

5.1 Form of written request

A written request for a voluntary abatement program regarding a violation may be in one of the following forms:

- (a) an inspection report
- (b) a letter
- (c) a Violation Notice
- (d) a Voluntary Abatement Request

With very few exceptions, the maximum time for a response will be up to 30 calendar days from the date of the ministry's request that a voluntary abatement program be undertaken.

5.2 Content of response

A satisfactory response to a request that a voluntary abatement program be undertaken must be signed by the person responsible or by an officer, employee or agent of the person responsible who has appropriate signing authority and either:

1. confirm that the action requested was completed within the time specified in the request; or
2. include a detailed description of the voluntary abatement program, that is satisfactory to the ministry. The voluntary abatement program must include the following:
 - (a) a comprehensive description of the proposed program to be performed;
 - (b) a projected completion date, together with any intermediate steps against which the ministry can regularly measure the progress of the work;

and may include one or more of the following:

- (c) applications and, where applicable, fees for any required authorizing documents;
- (d) a description of the proposed construction/alteration of facilities;
- (e) a description of the proposed installation/modification of equipment;
- (f) a list of any professional services hired;
- (g) proposals to conduct necessary studies and any available study reports;
- (h) proposals to conduct sampling programs and any available sampling results;
- (i) a description of any proposed public consultation process;
- (j) a summary of alternatives considered for the proposal.

In requesting that a voluntary abatement program be undertaken and in acknowledging, to the extent necessary, that a voluntary abatement program seems adequate to correct the problem, **staff must not provide any assurance, written or oral, that voluntary abatement will affect the decision as to whether or not the ministry will proceed with prosecution for ongoing or past non-compliance.**

5.3 Extensions, inadequate or negative responses

When the ministry receives a written request to extend the date for the submission of the response, it may, but is not obligated to, provide additional time as deemed appropriate by the District Manager.

If the response is considered inadequate, the ministry may, but is not obligated to, provide an opportunity to improve the response in a time frame deemed appropriate by the District Manager.

If the ministry's request that a voluntary abatement program be undertaken receives a negative response, is ignored, or no additional time is provided, the ministry shall proceed in accordance with section 6 - *Mandatory abatement*.

5.4 Program approval

A program approval is a form of voluntary abatement which is authorized under sections 10 and 11 of the *Environmental Protection Act*.

A person responsible for a source of contaminant may submit a program to prevent, reduce, and control the discharge or likelihood of a discharge into the natural environment. The Director may issue a program approval when:

- (a) the person responsible has submitted a satisfactory program, subject to the criteria outlined in section 5.2 - *Content of response*;
- (b) the person responsible has co-ordinated the appropriate public consultation, as outlined in section 7 - *Public notification and consultation*, with the necessary modifications;
- (c) an evaluation as outlined in section 4.4 - *All other non-compliance situations* has occurred;
- (d) the preparation of the program approval has followed section 6 - *Mandatory abatement* with the necessary modifications;
- (e) The requirements of the *Environmental Bill of Rights* have been met; and
- (f) The program approval contains the following:
 - (i) the heading Program approval
 - (ii) name of person to whom the approval is directed
 - (iii) location and nature of source of contaminant
 - (iv) details of the program
 - (v) intermediate steps which the ministry can measure progress
 - (vi) an expiry date; and
 - (vii) the Director's signature.

Agreement by the ministry to a voluntary abatement program does not constitute a program approval. A program approval must be issued under sections 10 and 11 of the *Environmental Protection Act*, signed by a Director and titled as such.

Non-compliance with a program approval cannot be directly enforced by prosecution. If the program approval is not fully complied with, then prosecution may proceed for the original violation in accordance with the act.

5.5 Deviation from schedule

The person responsible shall provide a written submission with reasons for modifications or deviation from a voluntary abatement program. The District Manager may accept the submission after considering section 5.6 - *Time limit when progress unsatisfactory* and any other relevant factors considered appropriate. Any acceptance of a deviation or modification to the schedule must be provided in writing.

Deviation from the schedule outlined in a program approval must be confirmed by an order amending the approval. Such an amendment must be signed by the Director.

5.6 Time limit when progress unsatisfactory

Where a voluntary abatement program is not proceeding in accordance with the schedule proposed by the person responsible and accepted by the ministry, the ministry may give a written warning to the person responsible or may proceed with a mandatory abatement program.

After considering factors outlined below, the ministry may issue no more than two written warnings before mandatory abatement is initiated.

The length of time that elapses before the ministry issues written warnings, if any, or decides to take further action respecting unsatisfactory progress on a voluntary abatement program will vary depending on the following:

- (a) the type of abatement required to achieve compliance;
- (b) the extent to which the rate of progress deviates from the schedule;
- (c) the reason for any deviation;
- (d) additional factors affecting the situation.

In no case, however, will the ministry tolerate unsatisfactory progress on a voluntary abatement program beyond 180 calendar days.

The length of time required for voluntary abatement may vary, and acceptable voluntary abatement programs may exceed six months from start to finish. The maximum time limit of 180 days relates to any one period of unsatisfactory progress and not the length of the voluntary abatement program. The ministry may impose mandatory abatement action at any time prior to the expiry of the 180-day period.

6. MANDATORY ABATEMENT

Where mandatory abatement is considered appropriate, the ministry will issue one or more of various control documents or amend one or more existing authorizing documents. These control documents and authorizing documents are listed in schedule 1.

It is the responsibility of the appropriate Director to select the control document or authorizing document, or one or more of each of them, which is most appropriate to achieving abatement depending on the specific circumstances at hand.

6.1 Consideration in preparing control documents and authorizing documents

In preparing a control document or amending an authorizing document where mandatory abatement is appropriate, the Director shall consider the following:

- (a) the advice of Legal Services Branch;
- (b) the results of any economic analyses undertaken in accordance with Guideline F-14 entitled *Guidelines for economic analyses of private sector pollution abatement and environmental protection measures*;
- (c) inspection reports or other forms of documentation pertaining to an inspection conducted by a provincial officer;
- (d) the provincial officer's report. This is a mandatory requirement for control orders under section 7 of the *Environmental Protection Act*. It may also be used in support of other control documents;
- (e) submissions from persons named in the control document or authorizing documents;
- (f) the confidentiality provisions of the ministry's legislation and the *Freedom of Information and Protection of Privacy Act*;
- (g) the comments received through the process outlined in section 7 - *Public notification and consultation*.

6.2 Compliance schedule

All control documents should include a schedule for compliance and may include intermediate steps against which the ministry can measure progress towards compliance and, where appropriate, an expiry date.

6.3 Change in status

All control documents and authorizing documents should include a requirement that the person responsible report in writing to the Director or designate any significant changes in the operation, emissions, discharges, ownership, tenancy or other legal status of the facility or operation to which the control document or authorizing document applies.

6.4 Financial assurance

Financial assurance may be imposed by the ministry to ensure that the ministry will have access to funds to proceed when a control document or authorizing document is not complied with.

Reference should be made to Guideline F-15 entitled *Financial assurance*.

6.5 Responsibility for emissions and discharges

As required by legislation, it is the duty of the person responsible to control emissions and discharges at all times.

The fact that a facility is undergoing alteration, installation, start-up, shutdown, breakdown, maintenance or decommissioning does not absolve the person responsible from this duty.

6.6 Financial constraints

Financial constraints on the part of the person responsible should not be accepted as a reason for not issuing a control document or for non-compliance with the requirements of a control document or authorizing document, but may be considered by the Director, in consultation with the Assistant Deputy Minister - Operations Division, or designate, in determining the compliance schedule contained in a control document or authorizing document.

6.7 Field orders

A field order is a control document which may be issued by a provincial officer, appointed as a Director, who has the grounds and the authority to issue an order, direction or requirement under the applicable sections of the acts, and when the appointment authorizes the measures. The appointment of provincial officers as Directors has limitations which are specified in schedule 2 of this guideline.

When a provincial officer appointed as a Director issues a field order, this section - *Mandatory abatement* - and section 7 - *Public notification and consultation* - apply with the necessary modifications.

In addition to the right of appeal provided for in the *Environmental Protection Act* and the *Ontario Water Resources Act*, the person named in the field order may contact the Regional Director or a designate by telephone or in writing regarding the issuance of the field order to them or any other person and with respect to the contents of the field order up to three working days after the date of service. The Regional Director may, by further order, amend, vary or revoke the field order based on the submissions received, the field observation report and any information provided by the issuing Director.

In addition to the right of appeal provided for in the *Pesticides Act*, the person named in a draft field order may contact the Regional Director or a designate by telephone or in writing regarding the issuance of the field order to them or any other person and with respect to the contents of the field order up to three working days after the date of service of the notice. The Regional Director may amend, vary or revoke the notice based on the submissions received, the field observation report and any information provided by the issuing Director.

6.8 Internal consultation and notification

When a control document to be issued by the Minister is considered appropriate, the Director shall consult the Assistant Deputy Minister - Operations Division or designate to obtain the Minister's approval to proceed. When a Regional Director is of the opinion that the nature, extent and severity of the problem, and/or the level of public concern, are high, the assistant deputy minister - Operations Division, or designate shall be consulted, when practicable, prior to the control document or authorizing document being issued.

When a Director, other than the Regional Director, is of the opinion that the nature, extent and severity of the problem, and/or the level of public concern, are high, the Regional Director or designate shall be consulted when practicable, prior to the issuance of the control document or authorizing document.

In all other cases the Director may proceed to issue the control document.

The offices of the assistant deputy minister - Operations Division and of the Legal Services Branch shall be notified of the issuance of all control documents except field orders. The Investigation and Enforcement Branch shall be notified of the issuance of all control documents through an occurrence report. When a Director other than the Regional Director issues any control document, the Regional Director or designate shall be notified.

Refer to section 7- *Public notification and consultation* - for notification to the person responsible and the public.

6.9 Authorizing documents

An authorizing document may be used in a similar manner as a control document in a non-compliance situation. If there is an existing authorizing document associated with the situation and the non-compliance situation is not already addressed by it, mandatory abatement may be achieved through an amendment which imposes new conditions. Whenever authorizing documents are used as a form of control documents, this section - *Mandatory abatement* - and section 7 - *Public notification and consultation* - apply with the necessary modifications.

Non-compliance with an authorizing document may be addressed by one or more of the following:

- (a) voluntary abatement;
- (b) mandatory abatement;
- (c) suspension or revocation;
- (d) enforcement.

6.10 Compliance with control documents

Control documents will be reviewed by the ministry to assess compliance in accordance with the requirements and dates detailed in the document.

6.11 Enforcement of control and authorizing documents

Where the person responsible does not meet the requirements and conditions of a control document or an authorizing document, the situation shall be documented in an occurrence report and forwarded to the Investigations and Enforcement Branch for consideration of enforcement action in accordance with section 9 - *Enforcement* - and section 10 - *Informed judgment*.

Alternatively, ministry staff may choose to issue a POA ticket/summons in accordance with section 12 - *Issuance of POA part I - Offence notice / summons*. In this case, the situation and the issuance of the POA ticket/summons must be documented in an occurrence report and forwarded to the IEB.

6.12 Notice of intent to issue a control document to the person responsible

Where required by legislation, the Director shall provide to the person responsible, a notice of the intention to issue a control document. [For example, unless there is an emergency as defined in the act, the *Ontario Water Resources Act*, section 100 requires notification for all control documents issued under the *Ontario Water Resources Act*, which includes field orders.]

When the legislation does not provide for a notice of intent to issue a control document, the Director shall give the appropriate notice to the person responsible. Circumstances where notice may not be appropriate includes in an emergency or for a control document which repeats legislated requirements.

7. PUBLIC NOTIFICATION AND CONSULTATION

The Director shall ensure the public is notified during the development of control and authorizing documents by means of the Environmental Bill of Rights (EBR) Registry unless notice of the proposed instrument is not required to be placed on the registry.

In addition to the EBR Registry, the minimum form of public notification for control documents, except field orders, should include providing a copy of the document to the local MPP, the local municipality, upper-tier municipality, affected First Nation and Aboriginal communities and, in unorganized communities, the responsible government agency including the Local Service Board, where applicable. Where appropriate, similar parties should also be advised of the issuance of field orders. [Note that the *Ontario Water Resources Act*, section 100, requires notification to the local municipality for all control documents issued under the *Ontario Water Resources Act*, which includes field orders.]

Where appropriate, notification and consultation, other than that provided for above, may be enhanced by using methods listed in section 7.4 - *Selection of appropriate means*. The extent of consultation will vary according to circumstances and as considered appropriate by the Director taking into consideration the factors listed in section 7.3 - *Determination of extent*. Activities may range from individual contact with local residents to public meetings.

Notification and, as appropriate, consultation on a government-to-government basis should occur with affected First Nation and Aboriginal communities in accordance with any agreements in that respect.

Guideline H-5, *Public consultation*, should be referenced when conducting public consultation.

7.1 Abatement of immediate danger

When an immediate danger exists, as outlined in section 4 - *Evaluation and initial response*, prompt notification will be provided to the affected public by such means as the Director considers appropriate.

The Director should also ensure that the local MPP, the local municipality, the upper-tier municipality, affected First Nation and Aboriginal communities and, in unorganized communities, the responsible government agency including the Local Service Board, where applicable, are sent a copy of any control document or amended authorizing document issued for abatement of an immediate danger.

It should be noted that, under the *Freedom of Information and Protection of Privacy Act*, the Minister, despite any other provision of that act, is required, as soon as practicable, to disclose any information to the public or persons affected if he/she has reasonable and probable grounds to believe that it is in the public interest to do so and that the information reveals a grave environmental, health or safety hazard to the public. (*Freedom of Information and Protection of Privacy Act*, Part II: Access to records, section 11).

7.2 Determination of extent

Factors to be considered in determining the extent of public notification and consultation and the appropriate means by which it should be undertaken, include the following:

- (a) whether pollution is actually occurring;
- (b) the nature, extent and duration of the pollution;
- (c) the area of impact of the pollution;
- (d) the extent and level of local interest and concern;
- (e) the magnitude, probable duration and potential local impact of the abatement program;
- (f) the property rights of neighboring and abutting landowners as well as tenants.

7.3 Selection of appropriate means

Having considered the factors listed in section 7.2 - *Determination of extent*, one or more of the following may be selected as the appropriate means of public notification/consultation:

- (a) letter to the MPP, the local municipality, upper-tier municipality, affected First Nation and Aboriginal communities and, in unorganized communities, the responsible government agency including the Local Service Board, where applicable;
- (b) news release;
- (c) local newspaper advertisement;
- (d) door-to-door flier;
- (e) letter to residents;
- (f) individual contact with residents;
- (g) meeting(s) with concerned group(s);
- (h) open house sessions;
- (i) public meeting(s);
- (j) meeting(s) with municipal officials.

The above list is not exhaustive. Staff are advised to consult the Public Affairs and Communications Branch for advice respecting the wide variety of formal and informal means that are available for effective public consultation.

7.4 Public consultation on control documents

When, having considered the factors listed in section 7.2 - *Determination of extent*, it is decided that there should be additional public notification and consultation before the control document is finalized and served, the Director where appropriate, should ensure the following are done:

- (a) notification is provided to the public, including any affected parties listed in the land registry/title documents such as mortgage holders, that a situation exists which requires abatement;
- (b) all information respecting the situation, together with any proposals for abatement received or prepared by the ministry, are made available to the public. Only if this information is subject to the confidentiality provisions of the ministry's legislation and the *Freedom of Information and Protection of Privacy Act* may it be withheld;
- (c) the draft control document is released to the public, inviting comments within a clearly specified timeframe;
- (d) the EBR Registry requirements have been met;
- (e) additional consultation activities are undertaken as appropriate, using the means listed in section 7.3;

- (f) when a public meeting is considered appropriate, in addition to the person responsible, the adjoining property owners, the MPP, the local municipality, upper-tier municipality, affected First Nation and Aboriginal communities and, in unorganized communities, the responsible government agency including the Local Service Board, where applicable, will be provided with advance notice of any public meeting;
- (g) at the expiry of the specified comment period, public comments and submissions from the person responsible shall be taken into account in finalizing the control document;
- (h) notification is provided to the public of the issuance of the control document by means which correspond to the consultation activities previously undertaken;
- (i) a copy of the final control document, as issued to the person responsible, is sent to the MPP, the local municipality, upper-tier municipality, affected First Nation and Aboriginal communities and, in unorganized communities, the responsible government agency including the Local Service Board, where applicable.

7.5 Amendments

For control and authorizing documents that are classified instruments under EBR, all environmentally significant amendments, including revocation, are required to be placed on the registry for public notification. The following factors will be considered when deciding whether the proposed amendments are environmentally significant:

- (a) the extent and nature of the measures that might be required to mitigate or prevent harm to the environment;
- (b) the geographical extent, whether local, regional or provincial, of any harm to the environment;
- (c) the nature of private and public interest, including government;
- (d) other relevant matters;
- (e) changes to the original compliance dates;
- (f) alterations to the original intent or planned results; and
- (g) any increase in the emission or discharge of pollutants from the facility/operation.

When appropriate public notification shall be undertaken for the proposed amendments in accordance with the requirements of the *Environmental Bill of Rights* and the procedures outlined in this section, *Public notification and consultation*, with the appropriate modifications.

8. DOCUMENTS AVAILABLE FOR INSPECTION

Copies of control documents, authorizing documents and program approvals shall be made available for public inspection, upon request to the ministry.

9. ENFORCEMENT

When an occurrence report is forwarded to the IEB, the factors contained in section 9 - *Enforcement* - and section 10 - *Informed judgment* - shall be considered when deciding whether enforcement action should be undertaken.

Whether enforcement action is recommended or undertaken, the ministry will act in accordance with this guideline to achieve abatement.

This section assumes that an occurrence report will be submitted from a district office. If that is not the case, this section still applies with appropriate modifications.

9.1 Matter referred to IEB

When the IEB supervisor receives an occurrence report of a violation, he or she will review the occurrence report and decide whether an investigation is warranted.

- (a) If an investigation is warranted, the supervisor shall assign an IEB officer, for the purpose of conducting an investigation to determine whether reasonable and probable grounds exist for laying charges. The district office shall be notified of the lead IEB officer assigned to the investigation through a copy of an occurrence report.
- (b) If an investigation is not warranted, the supervisor shall set out the reasons in an occurrence report, bring the matter to a conclusion and inform the district office through a copy of the occurrence report.
- (c) If the decision whether or not to investigate is different than that of the district office recommendation, the supervisor shall set out the reasons in an occurrence report and inform the district office through a copy of the occurrence report.

9.2 IEB investigation

When an IEB officer has carried out an investigation, he or she will decide in accordance with section 10 - *Informed judgment* - whether to recommend the initiation of a prosecution.

When the IEB officer, after making contact with the district office and giving due consideration to any additional information provided, decides that the initiation of a prosecution is not warranted, he or she will set out the reasons in a supplementary occurrence report, recommend the file be closed and submit the report to the IEB supervisor.

IEB shall keep the district office informed of the status of the investigation, unless the release of this information may cause harm to any person or jeopardize the investigation.

9.3 Prosecution brief

When an IEB officer recommends the initiation of a prosecution, he or she will prepare a written brief and submit it to the IEB supervisor.

The IEB supervisor and manager will review the brief prior to forwarding it to the IEB Director or designate.

The IEB Director or designate will review the brief and forward it to Legal Services Branch.

9.4 Internal notification of prosecution brief

The Assistant Deputy Minister's office - Operations Division, the district office and others, as appropriate, will be informed of the recommendation to initiate a prosecution through of a copy of the synopsis of the brief.

The Minister is not involved in discussions relating to the laying of charges or the ongoing conduct of prosecutions.

9.5 Legal Services Branch

The Director of Legal Services Branch or designate will consult with staff lawyers as to whether the evidence obtained is adequate and on whether prosecution would be in the interests of the administration of justice. Additional consultation may take place with staff of the Ministry of the Attorney General where appropriate.

Legal Services Branch may choose not to proceed, but shall first make contact and give due consideration to any additional information provided by IEB.

9.6 Attorney General

Ultimate authority on whether a prosecution proceeds or not rests with the Attorney General, in his or her traditional role of superintending of the administration of justice in the province.

9.7 Principles of enforcement

The ministry will act in accordance with established principles of enforcement which include the following:

- (a) all persons are entitled to equal protection and benefit before and under the law;
- (b) prosecution will be the result of an informed judgment by staff of the Investigations and Enforcement Branch and the proper exercise of prosecutorial discretion by ministry counsel; and

- (c) when a decision is made not to pursue enforcement action, the reasons shall be recorded in writing in the investigative file;
- (d) enforcement will be administered in an even-handed, nondiscriminatory and fair manner which advances and protects the public interest.

10. INFORMED JUDGMENT

At any stage of the investigative process, staff of the Investigations and Enforcement Branch shall consider the following, where practicable, in order to reach an informed judgment as to whether enforcement action is appropriate:

- (a) the seriousness of the violation itself, including whether the violation poses a significant risk to, or will have an adverse effect on, human, plant or animal life, property or the environment;
- (b) the seriousness of the violation in the context of the ministry's overall regulatory scheme, including whether the pollution emitted as a result of the violation is a serious obstacle to achieving the ministry's air quality and water quality objectives;
- (c) whether the violation appears to have been deliberate;
- (d) whether the violation appears to have been the result of negligence;
- (e) whether the violation has been repeated or is ongoing;
- (f) whether the offender has demonstrated, and continues to demonstrate, a negative attitude towards compliance with environmental legislation;
- (g) whether the offender has concealed pertinent information;
- (h) whether the offender has disregarded warnings issued by the ministry;
- (i) the offender's compliance record;
- (j) the deterrent effect of enforcement action on similar or other operations;
- (k) whether enforcement action is necessary to maintain the integrity of the regulatory process; and
- (l) whether failure to pursue enforcement action would tend to bring the law into disrepute.

While it is prudent to consider and evaluate the importance of all of these factors, and possibly others, and to assess which of them indicate that enforcement action is appropriate, there is no minimum number of items to justify recommending prosecution.

11. PROSECUTION

11.1 Prosecutorial discretion

Ministry counsel, in the proper exercise of their role as agents of the Attorney General, shall consider all relevant factors pertaining to the due administration of justice including, but not limited to, those factors listed in section 9 - *Enforcement* - and section 10 - *Informed judgment* - of this guideline, in reaching a final decision whether or not, in their exclusive discretion, a prosecution is warranted.

When ministry counsel determine that prosecution is not warranted, the reasons shall be documented and a copy sent to the Director of IEB, or designate.

11.2 Penalty

The penalty requested by the Crown prosecutor upon conviction will be commensurate with the seriousness of the offence, and the attitude and circumstances of the offender. The Crown should also consider the current condition of the non-compliance situation and, following discussions with the ministry, request, where appropriate, restoration orders or other available relief from the courts in addition to any other penalty. In addition to Ministry of Attorney General policy, the Crown should also consider the principle of general deterrence.

Where a restoration order or other relief is provided for by the courts, the Investigations and Enforcement Branch will notify the district office, and provide them with a copy of any court documents regarding the order or relief.

Compliance with orders and other relief provided for by the courts, shall be handled in accordance with sections 6.10 - *Compliance with control documents* and 6.11 - *Enforcement of control and authorizing documents* with the necessary modifications.

12. ISSUANCE OF POA PART I - OFFENCE NOTICE / SUMMONS

Part I of the *Provincial Offences Act* allows for the issuance of offence notices (ticket) and summons. This part of the *Provincial Offence Act* is intended for minor offences, where the offence notice or summons is issued at the time of the offence or no later than 30 days after the date of the offence. The maximum penalty under this part is \$500.00

12.1 Offence notice (ticket)

There are certain violations which may be prosecuted through the issuance of a *Provincial Offences Act* offence notice, commonly known as a ticket. In accordance with section 10 - *Informed judgment* - with the necessary modifications, any provincial offences officer may issue an offence notice under the *Provincial Offences Act* as an abatement and/or an enforcement tool.

Issuing a ticket initiates a prosecution but permits direct payment of a fine if the person responsible pleads guilty. The regulations under the *Provincial Offences Act* prescribe short form wordings describing the offence for use on offence notices.

As outlined in section 3 - *Documentation* - the issuance of an offence notice must be documented on an occurrence report.

12.2 Part I summons

A Part I summons is generally used where there is a minor offence for which there is no short form wording, no set fine, or it is a subsequent offence. Unlike the offence notice, there is no provision to plead guilty and pay the fine out of court. The issuance of a part I summons requires both the defendant and the Crown to appear before the court for a trial.

In accordance with section 10 - *Informed judgment* - with the necessary modifications, any provincial offences officer may issue a part I summons following consultation with IEB.

As outlined in section 3 - *Documentation* - the issuance of an summons must be documented on an occurrence report.

13. ISSUANCE OF A POA PART III - FOUND COMMITTING SUMMONS

Part III, section 22 of the *Provincial Offences Act* provides that a provincial offences officer, who finds that an offence has been committed by a person whom he or she finds at or near the place where the offence was committed, may issue a summons to the individual prior to laying an information.

When an IEB provincial offences officer serves a summons under section 22 of the *Provincial Offences Act*, section 9 - *Enforcement* - section 10 - *Informed judgment* - and section 11 - *Prosecution* - of this guideline will apply with the necessary modifications.

The use of section 22 summons is limited to provincial offences officers within IEB only.

**14. INFORMATION FOR THE PUBLIC RESPECTING ENFORCEMENT
ACTIVITIES**

The ministry will inform the public of its enforcement activities by means of news releases or other means considered necessary to keep the public informed.

COMPLIANCE GUIDELINE - SCHEDULE 1

CONTROL DOCUMENTS			
ENVIRONMENTAL PROTECTION ACT			
SECTIONS OR REGULATION	TYPE	ISSUED BY	ALSO USED FOR FIELD ORDER
7, 124, 125, 126, 127	Control order	Director	NO
8, 128, 129, 130	Stop order	Director	NO
11	Program approval amendment order	Director	NO
17	Remedial order	Director	YES
18	Preventative measures order	Director	YES
29	Report by Minister	Minister	NO
43	Order for removal of waste	Director	YES
44	Upgrade order	Director	YES
49 & 50	Order for seizure	Court	NO
79	Private sewage order	Director	YES
94	Directions to restore	Minister	NO
95	Entry and removal order	Judge	NO
96	Spill direction / approval	Director	NO
97	Order to restore	Minister	NO
146	Cause to be done	Minister	NO
147	Cause to be done	Director	NO
148	Cause to be done	Director	NO
150	Order to pay	Director	NO
158	Entry or inspection order	Provincial Judge or Justice of the Peace	NO
183(1)	Restrain by action	Court	NO
183(2)	Restrain by order	Court	NO
190	Court restoration order	Court	NO
191	Licence order	Court	NO
Reg 346, sec 4	Air pollution order	Minister	NO
Reg 350	Meteorological alert	Director	NO
Reg 362 s. 5 & 6	Director's instruction	Director	NO

COMPLIANCE GUIDELINE - SCHEDULE 1

CONTROL DOCUMENTS			
ONTARIO WATER RESOURCES ACT			
SECTIONS OR REGULATION	TYPE	ISSUED BY	ALSO USED FOR FIELD ORDER
17	Entry or inspection order	Provincial Judge or Justice of the Peace	NO
29 (3)	Prevent water pollution injunction	Ontario Court Judge	NO
31	Sewage discharge order	Director	YES
32	Preventative measures order	Director	YES
34 (4)	Prohibit water taking order	Director	NO
34 (7)	Stop or regulate flow direction	Director	YES
48	Interim order	Appeal Board	NO
52 (3)	Order to unapproved water works	Director	NO
52 (5)	Requirements and directions for water	Director	YES
52 (6)	Direction to maintain water works	Director	YES
53 (3)	Order to unapproved sewage works	Director	NO
54	Sewage works establishment or extension order	Ontario Municipal Board	NO
60	Requirements and directions for sewage works	Director	YES
61	Directions to maintain sewage works	Director	YES
62	Report respecting sewage and water works	Director	NO
74 (2)	Public water or sewage service area order	Director	NO
80	Cause to be done	Minister	NO
81	Cause to be done	Director	NO
84 (1)	Order to pay	Director	NO
91 (1)	Sewage disposal order	Director	YES
92	Order to stop discharge into sewers	Director	YES
95	Restrain by order	Court	NO
112 (1)	Court restoration order	Court	NO
113	Suspension of licence order	Court	NO
Reg 903 s.21 (5)	Direction to abandon well	Director	NO

COMPLIANCE GUIDELINE - SCHEDULE 1

CONTROL DOCUMENTS			
PESTICIDES ACT			
SECTIONS OR REGULATION	TYPE	ISSUED BY	ALSO USED FOR FIELD ORDER
13(7)	Emergency notice	Director	NO
20	Inspection order	Provincial Judge or Justice of the Peace	NO
27	Stop order	Director or provincial officer	NO
28	Control order	Director	YES
30	Order to repair damage	Minister	NO
39	Cause to be done	Minister or Director	NO
46	Order to repair damage	Court	NO
47	Licences order	Court	NO
52 (1)	Restrain by order	Court	NO
52(3)	Restrain by order	Court	NO

COMPLIANCE GUIDELINE - SCHEDULE 1

AUTHORIZING DOCUMENTS	
ENVIRONMENTAL PROTECTION ACT	
SECTIONS OR REGULATION	TYPE
9	Certificate of approval
10	Program approval
27, 30 - 39	Waste management site or system certificate of approval
46	Former disposal site Minister's approval
77	Private sewage certificate of approval
78	Use permit
80	Private sewage hauler/installer licence
96	Spill direction or approval
Reg 362 sec 5 & 6	Director's instructions for storage, management, transfer, disposal or decontamination of pcb waste
ONTARIO WATER RESOURCES ACT	
34	Water taking permit
36 - 38, 47, 49 & 50	Well permit
40 - 42, 47, 49 & 50	Well contractor licence
43 - 47, 49 & 50	Well technician licence
52	Water works certificate of approval
53 - 56	Sewage works certificate of approval
PESTICIDES ACT	
5 (1), 11 - 13 & 33	Exterminator's licence
5 (2), 11 - 13 & 33	Operator's licence
6, 11 - 13, 33 & 34	Vendor's licence
7, 11 & 33	Extermination permit

COMPLIANCE GUIDELINE - SCHEDULE 2

FIELD ORDERS - LIMITATIONS

A field order is a control document which may be issued by a provincial officer, appointed as a Director, who has the grounds and the authority to issue an order, direction or requirement under the applicable sections of the acts, and where the things to be ordered are authorized by their appointment. The same sections, when used beyond field orders, have broader provisions provided by the legislation. The appointment of provincial officers as Directors has limitations, specified as follows:

Section 17 Environmental Protection Act

A field order under section 17 of the *Environmental Protection Act* may order the person to,

- (a) repair the injury or damage;
- (b) prevent the injury or damage; or
- (c) where the discharge has damaged or endangered or is likely to damage or endanger existing water supplies, provide alternate water supplies for a period not exceeding six months.

Section 18 - Environmental Protection Act

A field order issued under section 18 of the *Environmental Protection Act* may require a person who owns or who has management or control of an undertaking or property to do any one or more of the following:

- (a) To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order, where the time period does not exceed six months.
- (b) To obtain, construct and install or modify the devices, equipment and facilities specified in the order where the device or equipment is not subject to the requirement for a certificate of approval.
- (c) To implement procedures specified in the order for a period not exceeding six months.
- (d) To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.
- (e) To monitor and record the discharge into the natural environment of a contaminant specified in the order, for a period not exceeding six months, and to report to the Director.

Section 43 - Environmental Protection Act

A field order issued under section 43 of the *Environmental Protection Act* may order an owner an occupant or a person who has charge and control of such land or building to remove the waste and to restore the site to a condition satisfactory to the Director.

Section 44 - Environmental Protection Act

A field order issued under section 44 of the *Environmental Protection Act* may order the owner to take such action as is required to bring the system or the site in to conformity with this Part or the regulations within the time specified

Section 79 - Environmental Protection Act

A field order may be issued under section 79 of the *Environmental Protection Act* where the Director considers it necessary in order to lessen or prevent the discharge of any contaminant into the natural environment, and such an order shall be limited to:

- (a) bringing a sewage system into compliance with any of the terms and conditions in a certificate of approval issued under section 76 of the *Environmental Protection Act*;
- (b) operating, cleaning, emptying, disinfecting or maintaining a sewage system in compliance with the standards prescribed in the regulations
- (c) stopping the use or operation of a sewage system,
 - (i) that is not in compliance with the terms and conditions of a certificate of approval issued under section 76 of the *Environmental Protection Act*;
 - (ii) for which a certificate of approval has not been issued under section 78 of the *Environmental Protection Act*; and
 - (iii) for which a permit has not been issued under section 78 of the *Environmental Protection Act*; and

any such order under subsection (c) will be in place until the sewage system is in brought into compliance and a permit or certificate of approval has been issued.

Section 31 - Ontario Water Resources Act

A field order issued under section 31 of the *Ontario Water Resources Act* may prohibit the discharge by any person of sewage into any waters.

Section 32 - Ontario Water Resources Act

A field order issued under section 32 of the *Ontario Water Resources Act* may require a person who owns, manages or has control of a sewage works, water works or other facility which may discharge material into a water or watercourse that may impair the quality of the water, to do any one or more of the following:

- (a) To have available at all times, or during the periods specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order, where the time period does not exceed six months, to prevent, reduce or alleviate any impairment of the quality of the water or the effects of any impairment of the quality of the water.
- (b) To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order, where the device or equipment is not subject to the requirement for a certificate of approval.
- (c) To implement the procedures specified in the order for a period not exceeding six months.
- (d) To take all steps necessary to ensure that the procedures specified in the order will be implemented in the event that a water or watercourse becomes impaired or may become impaired.
- (e) To monitor and record the quality and quantity of any water specified in the order, for a period not exceeding six months, and to report to the Director.

Section 34(7) - Ontario Water Resources Act

A field order issued under section 34(7) of the *Ontario Water Resources Act* may require the person who constructed or made such well, hole or excavation or the registered owner of the land in which such well, hole or excavation is located, to stop for a period not exceeding six months, such flowing, leaking, diversion or release of water in such manner and within such time as the Director may direct, or require such person or owner to take such measures in relation to such flowing, leaking, diversion or release of water as the notice may require.

Section 52(5) - Ontario Water Resources Act

A field order (direction) issued under section 52(5) of the *Ontario Water Resources Act* may require the owner of water works to make returns to the Director of the matters and within the time specified in the direction.

Section 52(6) - Ontario Water Resources Act

A field order (direction) issued under section 52(6) of the *Ontario Water Resources Act* may require that a water works shall at all times be maintained, kept in repair and operated in such manner and with such facilities as may be directed from time to time by the Director, and any such direction is not to exceed a time period of six months.

Section 60 - Ontario Water Resources Act

A field order (direction) issued under section 60 of the *Ontario Water Resources Act* may require the owner of sewage works to make returns to the Director of the matters and within the time specified in the direction.

Section 61 - Ontario Water Resources Act

A field order (direction) issued under section 61 of the *Ontario Water Resources Act* may require that a sewage works shall at all times be maintained, kept in repair and operated in such manner and with such facilities as may be directed from time to time by the Director, and any such direction is not to exceed a time period of six months.

Section 91(1) & 91(2) - Ontario Water Resources Act

A field order issued under section 91(1) or 91(2) of the *Ontario Water Resources Act* may require the industrial or commercial enterprise to,

- (a) submit reports to the Director in respect of the collection, transmission, treatment, or disposal of sewage;
- (b) to maintain, keep in repair and operate such facilities as directed by the order, for a period not exceeding of six months.

Section 92 - Ontario Water Resources Act

A field order issued under section 92 of the *Ontario Water Resources Act* may require the person that discharges or causes or permits the discharge of sewage into a sewage works,

- (a) to stop such discharge; or
- (b) to take such action in accordance with and within the time required by the order, where the time required does not exceed six months.

Section 28 - Pesticides Act

A field order issued under section 28 of the *Pesticides Act* may require the person to whom the order is directed to,

- (a) stop the discharge of a pesticide or a substance or thing containing a pesticide into the environment,
 - (ii) for a specified period of time not exceeding six months, or
 - (iii) in the circumstances set out in the order; and
- (b) comply with any directions set out in the order relating to the manner in which a pesticide or a substance or thing containing a pesticide or the container of either of them may be handled, stored, used, disposed of, transported or displayed.

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